

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HARVINDER P. JULKA & MOHNI JULKA,

Plaintiff(s),

SECOND AMENDED
COMPLAINT

- against -

THE AUTOMOBILE INSURANCE COMPANY
OF HARTFORD, CONNECTICUT AND THE
TRAVELERS PROPERTY CASUALTY COMPANY,

08 CV 2410 (CLB) (GAY)

Defendants.

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Plaintiffs, by and through their attorney, ANTHONY J. PIRROTTI, ESQ., as and for their verified Complaint, states and allege as follows:

1. At all times hereinafter mentioned, the plaintiffs are residents of the County of Westchester, State of New York.

2. At all times hereinafter mentioned, the plaintiffs are the owner in fee of a three-story home located at 45 Northfield Avenue, Dobbs Ferry, New York.

3. Upon information and belief and at all times hereinafter mentioned, the Defendant, THE TRAVELERS PROPERTY CASUALTY COMPANY, (hereinafter referred to as "TRAVELERS"), is engaged in the insurance business and authorized to conduct business in the State of New York.

4. Upon information and belief and at all times hereinafter mentioned, the Defendant, AUTOMOBILE INSURANCE COMPANY OF HARTFORD, CONNECTICUT (hereinafter referred to as AICHC), is engaged in the insurance business and authorized to conduct business in the State of New York.

5. Upon information and belief, and at all times hereinafter mentioned, the defendant, TRAVELERS, is a domestic corporation licensed to do business in the State of New York.

6. Upon information and belief, and at all times hereinafter mentioned, the defendant, TRAVELERS, is a foreign corporation licensed to do business in the State of New York.

7. Upon information and belief, and at all times hereinafter mentioned, the defendant, AICHC, is a domestic corporation licensed to do business in the State of New York.

8. Upon information and belief, and at all times hereinafter mentioned, the defendant, AICHC, is a foreign corporation licensed to do business in the State of New York.

9. Upon information and belief and at all times hereinafter mentioned, the Defendant, AICHC, is one of the Defendant, TRAVELERS, companies.

10. Upon information and belief, at all times hereinafter mentioned, the Defendant, TRAVELERS, has offices located at P. O. Box 571, Monroe, New York.

11. Upon information and belief, at all times hereinafter mentioned, the Defendant, AICHC, has offices located at P. O. Box 571, Monroe, New York.

12. Upon information and belief, at all times hereinafter mentioned, the Defendant, TRAVELERS, issued a homeowner's insurance policy to the plaintiffs for premises located at 45 Northfield Avenue, Dobbs Ferry, New York.

13. Upon information and belief, at all times hereinafter mentioned, the Defendant, AICHC, issued a homeowner's insurance policy to the plaintiffs for premises located at 45 Northfield Avenue, Dobbs Ferry, New York.

14. That prior to issuing the plaintiffs a homeowner's insurance policy, the defendant had ample opportunity to inspect and assess plaintiffs' home.

15. At the time of issuing the homeowner's insurance policy to plaintiffs, the defendant was aware or should have been aware that there was no central heating system on the top floor of the home.

16. The policy of insurance issued by defendants, TRAVELERS and AICHC, bears Policy No. 979368948-633-1.

17. Plaintiffs, HARVINDER P. JULKA and MOHNI JULKA are the persons covered and insured under the terms of the insurance policy issued by the defendants, under Policy No. 979368948-633-1. Plaintiff, HARVINDER P. JULKA lived at the said premises with his wife, MOHNI JULKA.

18. Said premises located at 45 Northfield Avenue, Dobbs Ferry, New York were the premises under the terms of the homeowner's policy issued by the defendants, under Policy No. 979368948-633-1.

19. The policy of insurance issued by defendants was at all times paid and was not canceled at any point or any time.

20. On February 13, 2007, the plaintiffs sustained damages to the said premises located at 45 Northfield Avenue, Dobbs Ferry, New York, as a result the water freezing in the premises.

21. That said damages are covered by the plaintiffs' homeowner's policy issued by the defendants, TRAVELERS and AICHC.

22. That on or about September 5, 2007, the a representative of the defendants did notify the plaintiffs that his claim for damages was rejected.

23. The basis for the defendants' rejection of the claim was that the loss was caused by water that leaked from the plumbing and heating system as a result of freezing conditions.

24. The defendants further claimed that the plaintiffs did not use reasonable care to maintain heat in the house and did not drain the systems while the home was vacant and unoccupied.

25. The defendants were aware that the plaintiffs were on an automatic delivery system with the fuel oil company and that five (5) days before the alleged loss there was a fuel oil delivery made to the aforementioned premises.

26. The defendants were aware that the aforementioned premises were regularly visited by the plaintiffs and there was no indication that the plumbing and heating systems had malfunctioned in any way.

27. Defendants were on notice that the plaintiffs maintained a series of portable heaters which were thermostatically controlled and the heaters were located throughout the aforementioned premises, including the third floor, where the leak is alleged to have occurred.

28. That pursuant to the policy issued by the defendants, the only exception to coverage when the house is vacant, unoccupied or being constructed is if the insured does not maintain heat in the building or drain the pipes.

29. The plaintiffs at all times maintained a heating system in the building and it was serviceable and working on the date of the loss.

30. That pursuant to the terms of the insurance policy, the insured was also required to mitigate any further damages to the premises, which the plaintiffs promptly and sufficiently administered.

31. As a result of defendant's breach of the insurance policy plaintiffs have been damaged in the amount of (a) the value of the loss (b) the total cost of building a new home, (c) mortgage costs for the purchase of a new home, (d) frustration and annoyance that resulted from being forced to relocate for a sustained period of time, and (e) costs that would not have ordinarily been incurred as a result of the plaintiffs' sustained relocation.

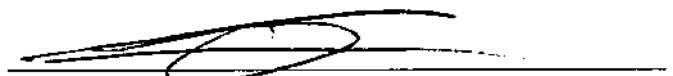
32. Based upon the foregoing, plaintiffs have been damaged in the sum of FIVE HUNDRED THOUSAND AND 00/100 (\$500,000.00) DOLLARS.

33. These damages have in no part been paid, nor will the defendants cover any part thereto, although duly demanded.

WHEREFORE, Plaintiffs demands judgment against the Defendants in the sum of FIVE HUNDRED THOUSAND AND 00/100 (\$500,000.00) DOLLARS, together with costs, disbursements, attorney fees and interest on this matter.

Dated: Ardsley, New York
July 17, 2008

Yours, etc.,



ANTHONY J. PIRROTTI, ESQ. (0109)
LAW OFFICES OF ANTHONY J. PIRROTTI P.C.
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TO: ALAN C. EAGLE, ESQ. (ACE 3451)
RIVKIN RADLER LLP
Attorneys for Defendants
926 Rex Corp Plaza
Uniondale, New York 11556-0926
(516) 357-3000

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

ANNE K. BRACKEN, being duly sworn, deposes and says:

I am not a party to the action, am over the age of eighteen (18), and reside at Stormville, New York.

On July 18, 2008, I served the within **PLAINTIFF'S SECOND AMENDED COMPLAINT** by depositing a true copy thereof, enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

JOANNE ENGELDRUM, ESQ.
RIVKIN RADLER LLP
Attorneys for Defendants
926 Rex Corp Plaza
Uniondale, New York 11556-0926
(516) 357-3000


ANNE K. BRACKEN

Sworn to before me this
18th day of July, 2008


NOTARY PUBLIC

ANTHONY J. PIRROTTI
Notary Public, State Of New York
No. 243361860
Qualified in Westchester County
Commission Expires December 31, 2010